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Supreme Court, U.S.
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No.

In the
Supreme Court of the United States

Anna V. Epelbaum,
Petitioner,

v.

Chicago Board of Education,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

---

PETITION FOR A WRIT OF CERTIORARI

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88 pp

QUESTIONS PRESENTED

1. Is it possible for the United States Court of Appeals from the beginning of any case's development to inflict on the lower court the pressure that this case should be dismissed no matter what?

2. Is it possible, while the case was running, to deny two Plaintiff's Petition for Writs of Mandamus and Prohibition, where the Plaintiff complained that the Defendant completely ignored all provided by her (the Plaintiff) material and also that the Defendant committed all kinds of fraudulent fabrications in the pertinent to the case court's material, and, therefore, due to her (the Plaintiff's) civil right under Amendment 7 of USA Constitution, asked the Court of Appeals for the Seventh Circuit to send her case to a trial by a jury?

3. Is it possible to continue to press the lower court to make the unlawful choice, forcing two judges to fire themselves from the case, when, as a result of the discussed in the questions above treatment of this case, the final judgment of it came up to the choice between two parties' motions for summary judgment, where one, the Defendant's, was stricken completely by the opponent (the Plaintiff) in the precise compliance with all tools, which were and are developed in this area of litigation, like, for example, patterns of the Supreme Court, of the Seventh Circuit Court of Appeals, and all other courts, and another motion, the Plaintiff's, was, according to the same rules and patterns, not opposed at all by the opponent, and should have been, subsequently, granted in full?

4. Is it possible, when finally the new judge, who hadn't run the case before the issuance of his judgment, made this outrageously unlawful choice, to affirm his decision, denying to the Plaintiff, who is the American citizen, any access to justice at all, the access, which is guaranteed to her by Amendment 9 of USA Constitution, and also neglecting and actually intentionally damaging all very important for this society issues, which were and are involved in the content and the development of this current lawsuit?

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

1. The opinion of the United States Court of Appeals for the Seventh Circuit appears at Appendix A and is unpublished.

2. The opinion of the United States District Court for the Northern District of Illinois appears at Appendix B and is unpublished.

JURISDICTION

1. The date on which the United States Court of Appeals decided the Plaintiff's case was 9/10/01.
2. A timely petition for rehearing en banc was denied by the United States Court of Appeals for the Seventh Circuit on the 10/12/01, and a copy of the order denying rehearing appears at Appendix C and is unpublished.
3. The jurisdiction of this Court is invoked under 28 U. S. C. paragraph 1254 (1).

CONSTITUTIONAL AND STATUARY PROVISIONS INVOLVED

1. Amendments 7, 9 of the USA Constitution:

A. Amendment 7, ".... The framers of the Constitution considered the right to jury trial extremely important.....In the Seventh Amendment they provided for such trials in civil suits where the amount contested exceeds $20. The Amendment applies only to federal courts.....";

B. Amendment 9, " The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage other retained by the people."

2. Civil Rights Act of 1964, Title VII : "..is a United States law that bans discrimination because of a person's color, race, **national origin**, religion, or **sex**. The act primarily protects the rights of.....minorities. It is one of nation's strongest civil rights laws..... The rights protected by the act include the person's freedom to seek employment.....".

3. Age Discrimination in Employment Act of 1967 (ADEA)

THE STATEMENT OF THE CASE

1. The Plaintiff (current Petitioner), Anna V. Epelbaum, who was registered with the Chicago Public School District since 8/91 and employed in the capacity of day-to day substitute since 12/1993, sues Chicago Board of Education for Discrimination in Employment under the entire Title VII and ADEA after her charge in EEOC was dismissed because the opposing party failed to provide response, and EEOC issued the Plaintiff right-to-sue letter.

2. The Plaintiff started her lawsuit in Federal District Court in 6/1998, assumed Pro Se representation on 8/14/98 and quit her job as a day-to-day substitute teacher of Chicago Public Schools District in 9/1998.

3. Her Amended Complaint was served upon the Defendant on 10/2/1998.

4. The history of the case is very complicated: Initially assigned judge Norgle was changed by assigned on 10/26/98 judge Pallmeyer, then judge Guzman was assigned on 12/3/99, then judge Darrah was assigned on 9/5/2000.

5. In response to the Defendant's Motion to Dismiss Plaintiff's Amended Complaint with Prejudice, which was filed on 11/12/98 by the appointed on the case counselor of the Defendant, Ms. S. Riley, and the Plaintiff's response to this motion, judge Pallmeyer issued on 2/5/99 Memorandum Opinion and Order, where she removed without prejudice timely barred Part of the Plaintiff's Amended Complaint. She also started Discovery Procedure, last documents of which were included as enclosure to affidavits of two principals from the Defendant's Notion for Summary Judgment, which was filed on 9/20/99.

6. The Plaintiff filed two Motions to Dismiss the Defendant's Motion for Summary Judgment on 9/27/1999 and on 10/12/99. Then she asked for extension of time to file final response. Her Cross-Reference Motion for Summary Judgment from 11/24/99 was filed as final response to the Defendant's Motion for Summary Judgment.

7. Newly assigned on the case judge Guzman modified the sequence of events from the last minute order of judge Pallmeyer, the Defendant filed response to the last motion of

the Plaintiff, the Plaintiff filed reply to this response, and the Defendant filed her co-response to the Plaintiff's reply in order to comply with judge Guzman changes to the last minute order of judge Pallmeyer.

8. Judge Darrah was assigned on the case on 9/5/2000. He was supposed to issue the ruling on previously fully briefed set of motions, which includes the Defendant's Motion for Summary Judgment, the Plaintiff's Motion for Summary Judgment, and numerous responses of both parties to the opposing party's Motion for Summary Judgment.

9. Judge Darrah issued on 2/12/01 Memorandum Opinion and Order where he granted in full the Defendant's Motion for Summary Judgment and denied the Plaintiff's Motion for Summary Judgment.

10. On 3/12/01 the Plaintiff filed her appeal to the Seventh Circuit Court of Appeals. The Plaintiff had contacted this court three times prior to that date during the very long and complicated development of this case in district court with one complaint about judicial misconduct, and two Petitions for Extraordinary Writs. All documents were denied.

11. In August of 2001, when the length of the pending of her appeal became bigger than it is prescribed by rules of the Seventh Circuit Court's Operating Procedure, the Plaintiff filed three motion to expedite the consideration of her appeal.

12. On 10/10/01 her appeal was denied. One of the judges of this last panel was a member of the panel, which denied the Plaintiff's first Petition for Writs of Mandamus and Prohibition. Two other members of this panel were members of the panel, which denied the Plaintiff's second Petition for

Writs of Mandamus and Prohibition. The Plaintiff's Petition for Rehearing En Banc (Appendix G to this petition) was also denied.

REASONS FOR GRANTING THE WRIT

1. DURING THE DEVELOPMENT OF THIS LAWSUIT AND IN ITS FINAL DECISION ON THE PLAINTIFF'S APPEAL THE SEVENTH CIRCUIT COURT OF APPEALS COMMITTED ALL KINDS OF VIOLATIONS, WHICH ARE MENTIONED IN SUPREME COURT RULE 10

A . As it is shown above, the exercise of the Seventh Circuit Court of Appeals supervisory power forced the District Court after it changes two judges on the case to choose the stricken motion for summary judgment over the untouched one and to issue, subsequently, the deeply erroneous in the matter of law judgment in this case, which it (the Court of Appeals) then affirmed. This situation presents the very far departure from "the accepted and usual course of judicial proceedings" and, therefore, is the subject of the Rule 10 (a).

B. The decision of the Seventh Circuit Court of Appeals doesn't contradict the decisions of the State Court of last resort, because no state courts were directly involved in these proceedings. However, granting in full the Defendant's motion, the ground of which was the complete absence of any liability of the CPS pertinent to the Plaintiff's case, this court's decision contradicts the decision of the state agency, Wage Section of the Illinois Department of Labor, which settled the Plaintiff's wage claim on the Plaintiff's behalf, and issued the presented in the Appendix D document. Remarkably, however, that after being served with the

previous document about the same subject, the CPS Payroll Department immediately subtracted twice this amount from the next paycheck of the Plaintiff. This occurrence and the following grievance procedure filed by the Plaintiff are included in the LR 56 (1) Statement of Facts from the Defendant's Motion for Summary Judgment, which the Plaintiff controverted with the precise compliance with this rule, and the Defendant was able to rebut these disputes only by the word "uncontested" (see page 7 of the Plaintiff's Petition for Rehearing En Banc from Appendix G to this petition). Therefore, due to this fact, the decision of the Seventh Circuit Court of Appeals becomes the subject for Rule 10(b).

C. The main period for consideration of the Plaintiff's complaint after the judge Pallmeyer dismissed without prejudice the main part of her complaint was since 3/97 until 6/98. It was the time when the CPS widely advertised the great shortage of specialists in the areas of the Plaintiff's competence, and computer generated reports about more than a hundred of openings in these areas were available in the Human Resources Department of the CPS. In reality, however, in such overcrowded by students Public School District as the CPS, all these reported openings were occupied by people without required by 105 ILSC 5/24 credentials, and, therefore, according to requirements of Illinois State Board of Education and Illinois State School Laws, have been still reported as openings. In this situation the Seventh Circuit Court's of Appeals reference to 105 ILSC 5/24-1 and reference to *Zink v. Bd. of Ed., 497 N.E. 2d 835, 839* imply that Chicago Board of Education had an authority to choose an unqualified, according to certification laws, educator over qualified, which is direct violation of entire 105 ILSC 5/24. Certification Laws in their turn, state quote-by-quote in Minimum Requirements to State

Certificates, " No one may teach or supervise in the public school nor receive for teaching or supervising any part of any public school fund, who doesn't hold a certificate of qualification granted by the State Teacher Certification Board"(see page 3 of Appendix A to this petition and pages 3,4 of Appendix G to this petition). It means that, pertinent to this issue, the decision of the Seventh Circuit Court of Appeals on the Plaintiff's appeal becomes, once more, the subject under Rule 10(b) of this Court Rules.

D. The choice of the stricken motion over the completely unopposed one was and is a very difficult problem because all judicial patterns and rules are designed to help to accomplish the opposite choice and, therefore, the only weapon, which the Defendant could have had in this battle, was the complete negligence to all submitted by the Plaintiff pertinent material and also all kinds of fraud, which the Defendant submitted and committed in support of her allegations. This weapon was approved for the Defendant by the appeals court when the Seventh Circuit Court denied both of the Plaintiff's Petitions for Extraordinary Writs. Later the Seventh Circuit Court used this weapon itself committing unavoidably on this way numerous contradictions to different pattern of the Supreme Court and becoming every time, therefore, the subject under the Supreme Court Rule 10(c). For example, the court in its order ignored the Plaintiff's usage of the disparate treatment pattern, which was developed by the Supreme Court in *McDonnell Douglas Corp. v. Green, 411 U.S.792, 36 L., Ed. 2d 668, 667(1973),* and, subsequently, contradicted the Supreme Court conclusion that the precise fit of this pattern to the considered in any case situation proves the discrimination in this situation. On the contrary, the appeals court required in his order (page 2 of Appendix A to this petition and also page 3 of Appendix G to this petition) the Plaintiff to present

her case to fit another, inapplicable to the situation in consideration, pattern. This fact means the contradiction to the Supreme Court pattern and the decision of the appeals court becomes the subject under Rule 10(c) of this Court.

E. On the page 3 of its order (Appendix A) the court of appeals claimed that the Plaintiff "failed to rebut facts presented by the Board showing that she was not qualified; namely that approximately twenty schools had requested that Epelbaum not be assigned to them, and that she was escorted out of one school by security guards". In reality, the Plaintiff first time showed that these accusations are illegitimate in her second Petition for Writs of Mandamus and Prohibition in June of 1999, when two members of the panel of the order in discussion were also members of that panel. Later, she was showing the obvious illegitimacy of these allegations many times more in the records of district court and in the materials of her appeal. The Defendant never rebutted her proofs, she simply completely ignored them (see page 7 of Appendix G to this Petition), the same did the appeals court panel. Pertinent to this issue, the decision of the court of appeals obviously contradicts the pattern, which this Court developed in *Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 67 L. Ed. 2d 207 (1981),* and, therefore, the decision of the court of appeals becomes, once more, the subject for Rule 10 (c) of this Court Rules.

F. It is obvious that the Seventh Circuit Court of Appeals approach to the choice of which motion for summary judgment to grant and which motion for summary judgment to deny violates all patterns in the area of this stature of litigation, including the developed by this Court pattern in *Celotex Corp. v. Catrett, 477 U.S. at 322,* which makes the appeals court's decision one more time the subject of violation under Rule 10(c).

G. Summarizing all of the above the Plaintiff wants to emphasize that in its decision the Seventh Circuit Court of Appeal committed violations under the entire scope of Rule 10, and her Petition for the Writ of Certiorari should be granted, therefore.

2. THE EXTREME IMPORTANCE OF THE ISSUES, WHICH ARE INVOLVED IN THE CONTENT AND THE DEVELOPMENT OF THIS LAWSUIT, FOR THE AMERICAN SOCIETY

A. This case includes a lot of material to illustrate the poor shape of the CPS and reasons for this poor shape's existence. During this year's campaign of Federal Government for the improvement of secondary public education, especially urban public education, the Plaintiff wanted to file her appeal directly in the Supreme Court because of two denied by the Seventh Circuit Court of Appeals Petitions for Writs of Mandamus and Prohibition. Then, due to some resemblance of her situation to *Aaron v. Cooper, 357 U.S. 566, 567, 358 US. 1, 13 (1958),* she decided to wait for the decision on her appeal in the Seventh Circuit Court of Appeals, and, in order to expedite its issuance, filed three motions with this request in the Seventh Circuit Court of Appeals. The answer of this court to first two motions (see page 1 of the third motion of the Plaintiff from 8/22/01 in Appendix E to this petition) states that the decision for the Plaintiff's case to proceed without oral argument from 6/8/01 was made not by the appeals court. It was also the day when the former CEO of the CPS, Mr. Vallas resigned. Another strange issue mirrored by the appeal's docket of the Plaintiff's case is the record of this docket from 10/10/01, which indicates that the CPS changed its name (see pages 2,4 of Appendix F to this

petition). The same day the decision of the court of appeals on the Plaintiff's appeal was issued. The Plaintiff's activities with this lawsuit, her attempts to improve the quality of education in the CPS contributed without any doubt to the dismissal of previous president and CEO of the CPS. **The message, which these strange records in the docket together with practical dismissal of the Plaintiff's case can send to any attentive beholder (the Defendant, sure, is the attentive beholder), is that any changes in the CPS can be only changes in names of administrators and in the name of the district. No changes in infrastructure, quality or other essential changes are possible**. The quality of public education badly needs repair. Therefore, this message should be changed and for that the unlawful decision on the Plaintiff's appeal should be changed also. The content of this paragraph alone is the sufficient reason to grant this petition.

B. The history of this case's development shows that three judges in the district court preferred to fire themselves from the case than to issue the decision, which they, certainly, were pressured to issue. The order of the Seventh Circuit Court of Appeals, denying the Plaintiff's Petition for Rehearing En Banc (see Appendix C to this petition), indicated that no judges on active duty proposed to vote on this petition. The fact that so many judges preferred to stay away from such crystal clear case as this one, but didn't have courage to express their opinions about its crystal clarity and the only possible legal solution of it, indicates that judicial system, at least in two courts in question, is not in the "best" shape. It is also remarkable at that point that after the Plaintiff filed her Reply Brief on 5/9/01 the Seventh Circuit Court of Appeals filed "oversized records" on 5/24/01 (see page 2,5 of Appendix F). Oversized pages of the Motion for Summary Judgment of the Defendant are pages which

include information, which the counselor was obligated to submit under the pressure of the court during the discovery. **The attempts to withdraw this evidence, committed by the Federal Court of Appeals, are more than eloquent and don't require any more comments**. In order not to drive the judicial system to the shape "beyond repair", which is the often used definition for the current shape of public education, such unlawful decision, as the one of the Plaintiff's appeal, should be controverted. The content of this paragraph alone provides the sufficient reason to grant this petition.

C. It is remarkable, that officers of the Board, managers of the CPS Human Resources Department, principals of different schools, etc. never opposed Illinois Certifications Laws or other legal issues, which are involved in this lawsuit. They confirmed them in their sworn affidavits and written letters. However, the reality of their operating procedures, which the Counselor of the Defendant was obligated to disclose under the court's discovery, shows precisely that at least 90% percents of their practice contradict their sworn statements. Therefore, it was easy for the Plaintiff to prove that at least 90% of the Defendant's Motion for Summary Judgment, the entire essential for the outcome of this motion part of it, are perjuries. **At that point, the current judgment of the Seventh Circuit Court of Appeal, which granted this motion in full, practically approves perjury as a tool in American judicial proceedings, and, therefore, this judgment should be controverted.** The content of this paragraph alone provides the sufficient reason to grant this petition.

D. This case presents the story of the Plaintiff's efforts to obtain the employment, according to her profession in the environment, which widely advertised the great shortage of

such specialists as she is. However, in reality this social environment not only rejected all her efforts to obtain this employment inside of it, but also placed in her file, unknown for her, fabricated derogatory statements, which incriminated that she has criminal background and, as a result, ruined all her attempts to obtain employment in secondary school districts anywhere else in Illinois, and, probably, anywhere else in USA at all. When the Plaintiff tried to complain to authorities, she was twice almost assassinated or heavily injured (police reports are in the material of the case), therefore, she was obligated to quit the CPS to run her case pro se. Numerous illegal remedies, which were applied to her during enormously long development of this lawsuit, don't need more comments. The question is then: "What is the difference between Taliban's order to stone women, who tried to obtain literacy to teach their own and other children, and the treatment of the Plaintiff?" The Plaintiff thinks that the answer is: "None". Really, the difference between the Plaintiff's case and cases of these women is only in the level of education, but this is the question of the quantity not the quality. Besides, the Plaintiff got her education outside of the country. **To find people, who sent Plaintiff through such Calgary, as to be not liable means to support or to mirror Taliban's practice in the mentioned above cases, and this is very destructive for the country's ideology, especially, in this time of "cold war" with the terrorists' psychology.** The content of this paragraph alone provides the sufficient reason to grant this petition.

E. This is the country of immigrants, and this circumstance contributed enormously to the leading position of this country in the world. There are a number of evaluation agencies around the country, which job is to evaluate credentials of newcomers in order to make for them their adjustment to professional employment in this country easier

and faster. The essential reason of Title VII creation is to protect rights of newcomers in this country of immigrants. However, this case shows how the Plaintiff, the newcomer, was senselessly tortured and denied the basic civil right - to work according to her profession in the period of the great shortage of such specialists. Her case includes some information about the terrible treatment, which Substitute Center has applied for years to its employees-newcomers. This information is presented in the Plaintiff's Appellant Brief, and can and, in Plaintiff's opinion, **necessarily should originate class action lawsuit against the CPS.** This information doesn't belong to this lawsuit in the way it was initially designed, but the unlawful decision on the Plaintiff's appeal sends the message that the behavior of Substitute Center towards newcomers should not be punished, and, subsequently, shouldn't be changed. This is the very wrong message for American society, and, therefore, the content of this paragraph alone provides the sufficient reason to grant this petition.

F. The improvements in this society are gradual and are made through reforms, but the speed of these improvements depends essentially on people who are able to fight the wrong features of the social environment. The Plaintiff has done the essential job running her case from the bottom to the top in spite of all odds. She, sure, wouldn't be able to fight for her own civil rights and the professional and other qualities of education, if she, for example, had children, who depended on her at the time when she was proposed to teach English instead of math (the salary was supposed to be the same), which was in higher demand than English and which she was qualified to teach in difference with English (see page 10 of the Appendix G to this petition). Having dependent children, she, probably, not only agreed to teach English, which she, although not professionally, but was

familiar with, but, for example, Chinese, which she has no idea about, as many other teachers in the CPS are obligated to teach subjects, they have no knowledge and credentials for, instead of subjects, which they are qualified for. **The decision of the Seventh Circuit Court of Appeals annulled what the Plaintiff has done, fighting for her rights and for quality and accountability of public education, and it would be pretty difficult to find in the nearest future another person who would be able to repeat what the Plaintiff has done**. Therefore, the content of this paragraph alone provides the sufficient reason to grant this petition.

G. The docket of this case in district court mentioned another lawsuit in Cook County Court in Chicago, which the Plaintiff got involved in during 8/1999. On the day of her last deposition in the CPS, 7/7/99, when it became completely clear to the Defendant that there are no legitimate means at all to dismiss this lawsuit, she didn't offer, however, to negotiate a settlement. But the same day the Plaintiff's landlord, who had been her landlord for seven years prior to this date, 7/7/99, served upon her five day notice with ridiculously wrong amount, and the Plaintiff considered it as a joke. However, the landlord started the lawsuit on the basis of this five day notice, the signature of Plaintiff's husband on the proof of service was fabricated, and without any knowledge of the Plaintiff, she was sentenced to be evicted from the place of her that time residence, while she had no rent debts and no expectation, whatsoever, about the possibility of such actions. The Plaintiff found out about the scheduled eviction from the sheriff's courtesy note, which informed her that this eviction should occur not more than three days later. This planned eviction was, obviously, expected to destroy all hard copies of the Plaintiff's court material and her computer records also and presented more

"radical" way to settle this lawsuit than conservative financial settlements. When, after the sheriff's notice, the Plaintiff appeared in the court room of the judge who ran this case (# 99 MI 717141 in Circuit Court of Cook County of Illinois), the judge refused to consider the Plaintiff's proofs that she didn't owe her landlord anything. The financial penalty was even increased. Obviously, the judge thought, or was ordered to think, that such person as the Plaintiff, who had the "arrogance" to sue the Chicago Board of Education (or by other words Chicago Public Schools (CPS)) should have been punished financially for that, no matter how illegal these means of this punishment were. The Plaintiff changed then immediately her place of residence. However, even at her new place of residence, she was experiencing very unusual frequency of unexpected global and local electrical power failures, which damaged files on her computer, while she was running her appeal in the Seventh Circuit Court of Appeals and preparing material for it. **The Plaintiff is sure, that, if authorities chose at that time not to inspire or at least not to neglect and, on the contrary, to oppose this kind of terrorist activities, which are described above in this paragraph, the entire country and this Court, in particular, would not be obligated to go through what we are going through now because of internal and external terrorism.** This is the very, very important reason why the appeals court decision on the Plaintiff's appeal should be controverted and the faster it would be done, the better chance this society would obtain for the necessary recovery after previous terrorist activities. Therefore, the content of this paragraph alone provides the sufficient reason to grant this petition.

H. Appendix H to this petition presents a number of documents, which many times appeared in the court's material in the district court as well as in Petitions for Writs

of Mandamus and Prohibition in the Seventh Circuit Court of Appeals, in following order:

a. The letter of the evaluation of the Plaintiff's diploma by the leading person in the secondary mathematical education in Illinois, and the introduction of his (the evaluator's) achievements in USA and other countries, and another letter of evaluation of Plaintiff's credentials. These evaluations were the part of the evaluation's procedure, which was required by one of the allowed by Illinois Board of Education credentials evaluation agency, which, in its turn, was chosen by the Plaintiff, pursuant to its (the agency's), in comparison with others, cheapness and speed of its evaluation process;

b. Valid during the time in consideration (as well as now) Plaintiff's permanent certificate to teach mathematics in secondary schools in Illinois;

c. Her accepted by Illinois Board of Education teaching experience;

d. The derogatory letter, which was placed in the Plaintiff's file without any of her knowledge in direct violation of Chicago Public School and Chicago Teachers Union Agreement, this letter was dated two months earlier than the Plaintiff's start of any work in the capacity of the substitute teacher for the CPS. The letter incriminated that the Plaintiff "resisted peace officer" (see *U.S. v. Jordan, C.A. 1983, 722 F.2d 353)* and was signed by the unknown then by the Plaintiff person, whom the Plaintiff met at the first time much later in the spring of 1995, when she was sent to his school after he became the "hero" of the cheating scandal, when it was proven that students tests results in his school were permanently fabricated;

e. The letter of the recommendation from 11/93 signed by the assistant principal of Senn High School, she also wrote the letter of the evaluation of the Plaintiff's performance as a substitute teacher with the evaluation "Excellent" from 5/98 (see page 5 of Appendix B), Senn was the first of "twenty schools", which "had requested that (Epelbaum) not be assigned to them" according to Substitute Center and court of appeals panel order (see page 3 of Appendix A), and where she was sent on regular basis (to all of these twenty schools) until the last day of her employment with the CPS in June of 1998, according to official records of her employment's assignments, which were included in the material of the Defendant's Motion for Summary Judgment;

f. The letter of the evaluation of the Plaintiff's performance as an instructor in Harold Washington Community College, **the only place**, where the Plaintiff was able to find employment after the mentioned above derogatory letter was placed in her file, and it could have happened only because she, the newcomer in the country, was known in this college as the graduate student at large while she was removing there the deficiency from Illinois State Board of Education for the permanent state certificate, and the hiring authorities **didn't need to consult her employer - the CPS about her image, abilities, and performance.**

All mentioned above documents, excluding the evaluation of the Plaintiff's performance as a substitute teacher from 5/98, just prior to the start of this lawsuit, were present in her file in the CPS since their issuance, they appeared in the material of this lawsuit many times since their existence became known by the Plaintiff.

The content of this Appendix brightly illustrates the Plaintiff's statement about "crystal legal clarity of this case", and also illustrates the fact that she, the legal permanent resident since 1990, and American citizen since 1996, was not able at all to obtain any access to justice, which is guarantied to her by the USA constitution, in the condition of the complete final as well as initial ignorance to everything, which she was submitting to the attention of two courts in question as well as to the Defendant. The content of this paragraph alone presents the sufficient reason to have the decision of the court of appeals controverted, and, therefore, this petition should be granted.

I. Summarizing all of the above, the Plaintiff wants, once more, to emphasize that this part of her petition presents eight reasons to grant this petition, and each one of these eight reasons is sufficient enough to have her petition granted.

THE PLAINTIFF'S REQUEST TO SKIP BRIEFING AND ORAL ARGUMENT, IF THIS PETITION IS GRANTED, DUE TO THE CRYSTAL LEGAL CLARITY OF THE CASE

1. The legal content of this lawsuit was crystal clear from the very beginning of it, the formal part of it, the choice between two motions of summary judgment, as it is described above in this petition, is also crystal clear.

2. Although the materials on records in district court are somewhat confusing because, as it is mentioned above, there were four judges changed on the case, and each one of them, except of the last, was unsuccessfully trying to find any legal basis for the decision that this judge was pressed to issue, the

material of the appeal, which was not interrupted such way, however, gives the sufficient picture of this lawsuit, and Appellee Brief, which was prepared by the new counselor of the Defendant, who never filed her appearance on the case either in the district court or in the court of appeals, provides the very bright illustration of the only weapon of the Defendant in this legal battle - the complete disregard of everything provided by the Plaintiff and "invention" of never existing on record material to confirm the Defendant's allegations.

3. This lawsuit has run for more than three years wasting a lot of taxpayers money within this while.

4. It is obvious that the Plaintiff is interested to finish this lawsuit through its only legitimate judgment as soon as possible, especially, under the circumstances, which are described in paragraph G of the previous part of this petition.

5. Due to the mentioned above crystal clarity of this case, the nature of the Defendant's future documents in support of the Defendant's Motion for Summary Judgment can have no other but the frivolous nature and might only increase the Defendant's financial penalty.

6. Summarizing the content of this part of the petition, the Plaintiff wants to emphasize that to skip briefing and oral argument in this crystal clear case would be profitable for each involved party as well as for the judicial system, and, therefore, asks this Court not only to grant her petition but this current request also.

CONCLUSION

Pursuant to the fact that the decision of the Seventh Circuit Court of Appeal provides a large number of violations under the Supreme Court Rule 10 and also pursuant to the extreme importance of the issues, pertinent to the content and to the history of this lawsuit's development for the current American society, and "the health" of its justice, this petition should be granted.

Respectfully submitted by:

Date: _____ _____

Anna V. Epelbaum, the Petitioner, Pro Se

APPENDIX A

The opinion of the panel of the Seventh Circuit Court of Appeals on the Petitioner's appeal, which was issued on 9/10/01.

I UNPUBLISHED ORDER I
I Not to be cited per Circuit Rule 53 I

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604
Submitted September 7, 2001*
Decided September 10, 2001

Before

Hon. JOEL M. FLAUM, *Chief Judge*

Hon. FRANK H. EASTERBROOK, *Circuit Judge*

Hon. MICHAEL S. KANNE, *Circuit Judge*

No. 01-1621

ANNA V. EPELBAUM,
Plaintiff-Appellant,

v.

CHICAGO BOARD OF EDUCATION,
Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 98 C 3423

John W. Darrah,
Judge

ORDER

Appellant Anna Epelbaum, a Jewish immigrant from the former Soviet Union, worked as a day-to-day substitute

* After an examination of the briefs and the record, we have concluded that oral argument is unnecessary. Thus, the appeal is submitted on the briefs and the record. See Fed. R. App. P. 34(a)(2)

teacher in the Chicago public school system from 1994 to 1998. During that time Epelbaum repeatedly applied to become a "cadre" (full-time) substitute teacher or a full-time teacher, but was not promoted to either position. After receiving a right-to-sue letter from the EEOC, Epelbaum brought suit against the Chicago Board of Education alleging that the Board discriminated against her on the basis of her sex, age, and national origin in violation of Title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act. The district court granted summary judgment for the Board, concluding that Epelbaum failed to establish that she was qualified for the positions she sought and that she failed to demonstrate that the Board proffered reasons for not promoting her were pretextual. Epelbaum appeals, and we affirm.

Construing her *pro se* brief liberally, as we must, Epelbaum appears to challenge the district court's judgment in two respects. First, Epelbaum argues that the district court erred by concluding that she failed to establish a *prima facie* case of age, sex, or national-origin discrimination. Epelbaum established that she was a member of a protected class. In order to present a *prima facie* case of discrimination, however, she also needed to set forth evidence showing that she was qualified for the positions she sought and that the positions were filled with individuals not in the protected class. *Gorence v. Eagle Food Ctrs.*, Inc., 242 F.3d 759, 764-65 (7th **Cir.** 2001); *Pafford v. Herman*, 148 F.3d 658, 669 (7th Cir. 1998). She failed to do so.

Epelbaum asserts that she was qualified for the full-time positions because the Illinois State Board of Education issued her a teaching certificate. Merely meeting the threshold requirements for certification by the ISBE, however, does not establish that she was qualified for the

positions of cadre substitute or full-time teacher. See 105 ILCS 5/24-1 (school boards have authority to determine qualifications of employment); Zink *v. Bd. of Ed.*, 497 N.E.2d 835, 839 (Ill. App. 1986) (more than teacher's certificate required to show qualification for position). To determine if an individual is qualified for a particular teaching position, the Board also considers the following factors, among others: her demonstrated experience and background in the relevant subject area, whether she is certified by the Illinois Board to teach more than one subject, and her teaching philosophy and previous work experience. In response to the Board's motion for summary judgment, Epelbaum failed to present evidence that she provided information regarding these factors to the Board; in fact, she failed to even identify the job requirements for the positions she sought and present evidence that she met those requirements. She also failed to rebut facts presented by the Board showing that she was not qualified; namely, that approximately twenty schools had requested that Epelbaum not be assigned to them, and that she was escorted out of one school by security guards. Epelbaum provided nothing more than her unsubstantiated opinion that she was qualified for the positions she sought, and that is not enough to create a genuine issue of material fact and avoid summary judgment. *Cleveland v. Porca Co.*, 38 F.3d 289, 295 (7th Cir. 1994). In the absence of evidence that she was qualified to be a cadre substitute or full-time teacher, Epelbaum failed to establish a *prima facie* case of discrimination and summary judgment for the Board was proper. Because she failed to set forth *a prima facie case*, we need not decide whether she rebutted the Board's proffered reasons for not promoting her.

Second, Epelbaum takes issue with the district court's dismissal of certain of her claims of discrimination.

Epelbaum filed an EEOC charge in January 1998, but alleged her complaint that the Board discriminated against her as early as 1991 (even though she did not start teaching in the Chicago public schools until 1994). The district court concluded that all of her claims of discrimination arising prior to March 1997 were barred because they occurred more than 300 days before she filed her EEOC charge and Epelbaum failed to establish that the allegedly discriminatory acts were part of a **continuing** violation. Epelbaum does not **pursue** the continuing **violation** theory on appeal, but argues for the first time that the 300-day limit should have been equitably tolled because she did not discover the real reasons for the adverse employment actions taken against her until discovery in this case. Epelbaum never raised equitable tolling in the district court, however, and has waived **this** argument. *Schoeiifeld v. Apfel,* 237 F.3d 788, 793 (7th Cir. 2001).

Accordingly, the judgment of the district court is AFFIRMED. Epelbaum's "Motion for the Clarification the Third Request to Expedite the Settlement of Case" is DENIED.

APPENDIX B

The opinion of the District Court from 2/12/01.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ANNA EPELBAUM,	)	
Plaintiff	)	No. 98 C 3423
v.	)	
CHICAGO SCHOOL REFORM	)	Judge John W. Darrah
BOARD OF TRUSTEES,	)	
Defendant.	)	

MEMORANDUM OPINION AND ORDER

Plaintiff, Anna Epelbaum, commenced an action against defendant, the Chicago School Reform Board of Trustees (Board), alleging age, national origin, sex, and wage discrimination. Before this Court are cross-motions for summary and miscellaneous motions related to the motions for summary judgment.

Initially, the Court will address the miscellaneous motions that relate to the motions for summary judgment. Plaintiff has proceeded pro se requiring her pleadings be liberally construed. *See Haines .v. Kerner,* 404 U.S. 519, 520 (1972). Plaintiff' s motions and responsive pleadings fail to contain any citation to case law or analysis of the facts of this case to such case law. The Court has carefully reviewed all the pleadings and addresses all the legally recognizable arguments adduced from plaintiff's pleadings.

Plaintiff filed a motion to dismiss defendant's motion for summary judgment, arguing that materials used as support for defendant's motion for summary judgment were

not disclosed to plaintiff and the motion for summary judgment was not timely filed.

Plaintiff filed a subsequent motion to dismiss upon direction of the Court in an attempt to explain what materials were wrongfully used to support defendant's motion for summary judgment. The second motion identifies several affidavits that plaintiff does not agree with but does not contain any evidence that the materials were not provided to plaintiff. In addition, the defendant's motion for summary judgment was timely filed after defendant received an extension of time to file the motion. Accordingly, plaintiff s motions to dismiss defendant's motion for summary judgment are denied.[1]

Defendant filed a motion to strike the affidavits of Michael Kelly, Wayne Pickette, and the plaintiff that were included in the plaintiff s cross-motion for summary judgment. Affidavits made in support of or opposing a motion for summary judgment must be made from personal knowledge and set forth facts that would be admissible in evidence. Fed. R. Civ. Proc. 56(e). The motions to strike the affidavits are well taken and, to the extent that they contain inadmissible opinions, speculation, conclusions, irrelevant facts, or refer to maters already dismissed from this case, they are deemed stricken and will be disregarded. In addition, the Court will not consider any evidentiary materials that are not properly designated as supporting a particular material fact as required by Local Rule 56.1(3). See *Bordelon v. Chicago School Reform Board of Trustees*, 233 F.3d 524, 527 (7th Cir 2000) (strict compliance with the local rules

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[1] Plaintiff titles the motions as: "Motion to Dismiss with Prejudice the Last Motion of the Defendant" and "Motion to Dismiss the Pending Motion of the Defendant With Prejudice (second version)."

governing summary judgment is upheld given the importance of local rules that structure the summary judgment process); *Bradley v. Work*, 154 F.3d 704, 708-09 (7th Cir. 1998).

Defendant also filed a motion to strike plaintiff s cross-motion for summary judgment and statement of facts because a memorandum was not filed in support of the motion and the statement of facts is legally insufficient. In light of plaintiff's pro se representation, the Court denies defendant's motion to strike plaintiff s cross-motion for summary judgment and statement of facts and will address the motion and statement of facts to the extent that they comply with the appropriate federal and local rules, i.e., the Court will not consider statements of fact that do not contain references to the factual record as required by LR 56.1(3).

Summary judgment is proper if " the pleadings, depositions, answers to interrogatories, and admission on file, together with affidavits, if any, show that there is no genuine issue as to any material fact." Fed. R. Civ. P. 56(c). All the evidence and the reasonable inferences that may be drawn from the evidence is viewed in the light most favorable to the nonmovant. *Miller v. American Family Mutual Ins. Co.*, 203 F.3d 997, 1003 (7th Cir. 2000). However, the nonmovant must still come forward with evidence establishing the elements of his claim on which he bears the burden of proof at trial. As such, he must establish specific facts that show there is a genuine issue for trial. *Miller*, 203 F.3d at 1003.

In August, 1991, the Illinois State Board of Education (ISBE) issued plaintiff a Type 29, Transitional Bilingual certificate with an endorsement in Russian. (Def.'s 56.1(a)(3) Statement q5). Type 29 certificates are temporary teaching certificates that require a teacher complete the requirements for a standard teaching certificate within a maximum of eight years. (Id., at q 5). Transitional Bilingual certificates certify the holder to teach

students in bilingual classes, grades K12, in the area of endorsement. (Id., at q7). Plaintiff s certificate expired in August, 1999. (Id., at q 8). In July, 1993, the ISBE issued plaintiff a standard Type 09 certificate with an endorsement in Math. (Id., at q 9). The Type 09 certificate certified plaintiff to teach grades 9-12 in the area of her endorsement, Math. (Id., at q 10). Prior to plaintiff s Type 09 certification, she repeatedly contacted the Board's Human Resources Department seeking assistance in acquiring a standard teaching certificate. The Human Resources Department advised plaintiff that certification issues were beyond the Board's jurisdiction and directed her to contact the ISBE. (Id., at qq 12-13). The Board also informed plaintiff that the selection of teachers is vested with the schools' principals and advised her of the appropriate procedures when plaintiff made inquires and requests for placement. (Id., at qq 49-50)

In January, 1994, plaintiff began working as a day-to day substitute teacher in the Chicago Public Schools. From March, 1997 through the fall of 1998, plaintiff worked at numerous high schools and elementary schools throughout the Chicago Public School system as a day-to-day substitute teacher. (Def.'s 5 6.1(a)(3) Statement q 14,41). During this time she did not have contact with the schools' principals. (Id., at q 42). Beginning in 1994, plaintiff visited the Substitute Center and caused disturbances, which resulted in her being escorted from the building by Safety and Security personnel. (Def.'s 5 6.1 (a)(3) Statement q 24). During these visits to the Substitute Center, plaintiff yelled and was disagreeable and uncooperative. (Id., at q 25). On a regular basis, plaintiff had arguments with students and administrators at the schools she worked as a substitute teacher. (Id., at q 26). On one occasion, plaintiff was sent home by an assistant principal for wearing inappropriate

attire; and, on another occasion, she was removed from Steinmetz High School by police escort. (Id., at qq 27-28).

To work as a substitute teacher, an ISBE substitute teacher certificate and registration with the Board's Substitute Center are required. The Substitute Center makes the daily assignments of substitute teachers in the Chicago Public Schools. (Id., at q18). Day-today-substitute teachers are not in a contractual continued service and can be assigned to working any class at any school where there is a temporary teacher absence, regardless of the subject area or grade level. (Id., at q 19). The principals of individual schools may request that a particular substitute teacher not be assigned to their school. (Id., at q 23). Approximately 20 principals or assistant principals requested that plaintiff not be assigned to their schools. (Id., at q 29). Plaintiff s most recent substitute assignment card contained a "NO" notation for 11 schools, including "Senn". (Assignment Card No. 10). In June of 1998, the Assistant Principal of Senn Metropolitan Academy completed an evaluation of plaintiff for an employment and placement service. The evaluation indicated a rating of "Excellent" for all aspects of the evaluation, including professional traits. (Exh. 12, Plaint's Response) .

In addition to day-to day substitutes, two types of cadre substitute teachers are hired. School cadre substitute teachers are selected by school principals, and regional or district cadre substitute teachers are selected by the Substitute Center. (Def.'s 56.1(a)(3) Statement q 30). Regional cadre substitute teachers are appointed to help fill vacancies as received by the Substitute Center from schools in distinct sections of the City of Chicago. For example, a regional cadre may be assigned to North side schools and will usually be assigned to schools within that section of the City. (Id., at q 33). To be selected as a regional cadre assigned to one of the six Educational Regional Offices, a teacher must be registered with the Substitute Center, have a college degree in

either elementary or high school education, and have a good track record as a day-to-day substitute teacher. (Id., at q 31). Day-to-day substitute teachers who have a significant number of "NO's" on their assignment cards, which indicate requests by schools that the teacher not be reassigned to work at a particular school, and who may be difficult to work with, are not selected as regional cadre substitute teachers by the Substitute Center. (Id., at q 34). Only a principal can select school cadre substitute teachers. (Id., at q 37). The school cadre positions are effective for one year, subject to annual reappointment by the school principal at the beginning of each school year (Id., at q 38). The Board limits the number of cadre substitute teachers a principal can select each year. (Id., at q 39). Selection as a school cadre substitute teacher is only an option after a teacher has taught at the school in some capacity, thereby providing the school principal an opportunity to observe and assess his or her job performance. (Id., at q 40).

Pursuant to the School Reform Act of 1988, the selection of all employees at a particular school resides with the school principal. All persons interested in employment with the Board must first be selected by a school principal, who then submits his or her selection to the Board for approval. (Def.'s 56. 1 (a)(3) Statement q 46). The Board retains the exclusive authority to employ, hire, and fire employees. (Id., at q 47).

Plaintiff asked assistant principals why she was not being hired as a cadre substitute teacher, and they responded that she was not chosen because they did not know her professionally and were selecting cadres from the district cadre list. (Def.'s 56.1 (a)(3) Statement qq 56-57). Plaintiff applied for a position teaching computer science at John School but was not hired. She does not believe that she was not hired for a discriminatory reason; instead, she was not

hired because computer science degree is not her "best degree." (Id., at q 59; Plaint.'s July, 7, 1999 Dep. p. 44). At least four other schools interviewed plaintiff but did not offer her a position. (Def.'s 5 6. 1 (a)(3) Statement q 98; Plaint.'s Response q 59). Plaintiff does not believe that any school principal discriminated against her. (Def.'s 5 6. 1 (a)(3) Statement q 55; Plaint.'s Dep. p. 148).

Plaintiff believes that she applied for employment at all Public Schools because she submitted resumes at job fairs and was included in employment databases with the Human Resources Department. (Def.'s 56.1(aO(3) Statement q 61). The Human Resources Department employment databases are available to all school principals seeking to fill vacancies. (Id., at q 62). However, principals are not required to review the databases before making interview and hiring decisions. (Id., at q 64). Some school principals do not refer to the employment database because they receive numerous resumes for each teaching vacancy. (Id., at qq 77, 83). To ensure consideration for employment, applicants must submit their resumes directly to school principals. (Id., at q 65). To be included in the employment databases, applicants are required to register with the Human Resources Department by completing a database card. (Id., at q 66). Plaintiff was included in the employment database for at least 1997. (Id., at q 63). Individuals that are in the employment database are notified that they are in the database through a Notice of Inclusion. The Notice of Inclusion does not indicate they are qualified for any position or guarantee that they will receive an interview or be hired. (Id., at qq 67-68). Plaintiff was contacted for three interviews as a result of principals learning of her interest through the employment databases. (Id., at q 99).

The Chicago Public Schools also conduct job fairs which are open to the public. (Def. 's 56.1(a)(3) Statement q 70). Notices of the job fairs due not guarantee attendees that

they will be interviewed or hired. Principals do not conduct interviews at the job fairs. (Id.,at qq 71-71).

In July, 1997, a clerk at Curie High School inadvertently failed to completely report plaintiff s time to the Payroll Department. When the error was discovered, Corrected Attendance Reports were sent to the Payroll Department to ensure that plaintiff was correctly paid for the time she worked. (Def.'s 5 6. 1 (a)(3) Statement q 100). The payroll records indicate that plaintiff was not paid for a total of 37.5 hours. (Id., at qq 101-02). The payroll Record Summary Adjustment indicates that on August 12, 1997, a clerk adjusted plaintiff s pay for 41.5 hours to compensate her for the efforts in her pay. (Id., at q 103). The same Record Summary Adjustment indicates that on August 13, 1997, a different clerk adjusted plaintiff s pay by 37.5 hours upon the receipt of the Corrected Attendance Reports. (Id., at q 105). On August 18, 1997, the Payroll Department discovered the overpayment error and entered into the computer a negative salary adjustment to recoup the erroneous payment in the amount of $614.26. This amount reflects the difference between the amount plaintiff had been owed as reflected in the corrected attendance reports (37.5 hours) and the amount she received on August 15, 1997. (Id., at q 107). The adjustment to plaintiff s salary was not made until February 6, 1998, because that was the first time her pay exceeded the amount of the negative salary adjustment. (Id., at q 108).

In August, 1997, plaintiff filed a wage claim with the Illinois Department of Labor against Curie High School alleging she was owed $266.46 for work she performed at Curie High School during the summer of 1997. (Id., at q 111). Curie High School responded to the Department of Labor advising it

that plaintiff had actually been overpaid in error and refused to make any additional payments. In April, 1998, plaintiff received notice from the Department of Labor that it attempted to collect the wages due plaintiff but had been unsuccessful. (Plaint.'s Response q 113 and Exh.). In March, 1998, the Chicago Teacher's Union filed a grievance on plaintiff's behalf concerning the deduction of $518.00 from her wages in February, 1998. (Def.'s 56. 1 (a)(3) Statement q115). The grievance was denied because the adjustment was made to recoup an overpayment that had been pal and not returned. (Id., at q 116). Plaintiff s appeal of the denial of the grievance was also denied. (Id., at q 117). In the fall of 1998, plaintiff ended her employment with the Board upon her own initiative. (Id., at q 120).

Plaintiff alleges that she was discriminated against on the basis of her age, national origin, and sex based on her not being hired in the Chicago Public School system and a dispute in her pay.[2]

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[2] The Court has previously ruled that any claims arising from conduct before January 1998 are time barred because the fall outside the 300-day period prior to the filing of her charge. Epelbaum v. Chicago Board of education, No. 98 C. 3423, 1999 WL 89754 (Feb. 9, 1999). Therefore, numerous arguments made by the plaintiff for conduct outside this time period are not considered by the Court and cannot be used as a basis to deny summary judgment. However, while plaintiff's wage dispute is based on work conducted in 1997, the dispute continued in 1998, and the plaintiff alleges the dispute illustrates the Board's discriminatory motivation. Therefore, because the dispute continued into the applicable time period, the Court will consider the wage dispute in evaluating the motions for summary judgment.

Title VII makes it unlawful for an employer to fail or refuse to hire an individual, or otherwise discriminate against an individual with respect to her compensation, based on that person's sex or national origin. 42 U.S.C. § 2000e-2(a)(1). The Age Discrimination in Employment Act (ADEA) makes it unlawful to "discharge any individual or otherwise discriminate against any individual ... because of such individual's age." 29 U.S.C. § 623(a)(1); *Reeves v. Sanderson Plumbing Prods., Inc.*, 530 U.S. 133 (2000). A plaintiff may prove discrimination through either direct or circumstantial evidence or the indirect burden-shifting method established in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973). *Jackson v. E.J Brach Corp.*, 176 F.3d 971,982 (7th Cir. 1999) *(Jackson)*. Direct evidence is defined as "evidence' which if believed by the trier of fact, will prove the particular fact in question without reliance on inference or presumption.'" Plair *v. E.J Brach & Sons*, 105 F.3d 343, 347 (7th Cir. 1997) (citation omitted). In an employment discrimination case, direct evidence must speak directly to the issue of discriminatory intent, and it must relate to the specific employment decision in question. *Cowen v. Glenbrook Security Serv., Inc.*, 123 F.3d 438, 443 (7th Cir. 1997). Plaintiff has not presented any direct evidence of discrimination, and her motion for summary judgment argues disparate treatment; thus, the focus is on the *McDonnell Douglas* burden-shifting method. See *Credo v. Zema System s Corp.*, 944 F.Supp. 677, 682 (N.D.111. 1996) (Title VII and ADEA claims are analyzed according to *McDonnell Douglas)*.

Under the *McDonnell Douglas* burden-shifting test, the plaintiff must first establish a prima facie case by the preponderance of the evidence. *Jackson*, 176 F. 3d at 982. If the plaintiff establishes a prima facie case, a rebuttable presumption is created; and the employer must come forward with evidence of a legitimate, nondiscriminatory reason for its

actions. If the employer meets this requirement, the burden shifts back to the plaintiff to demonstrate, again, by a preponderance of the evidence, that reasons proffered by the employer are actually a pretext for discrimination. *McDonnell Douglas, 41* 1 U.S. at 804; *Adreani v. First Colonial Bankshares Corp.*, 154 F.3d 389, 394 (7th Cir. 1998) *(Adreani).*

A. National Origin and Sex Discrimination

To establish a prima facie case of national origin or sex discrimination, plaintiff must establish that: (1) she is a member of a protected class; (2) she applied and was qualified for a job for which the employer was seeking applicants; (3) that, despite her qualifications, she was rejected; and (4) after her rejection, the position remained open, and the employer continued to seek applicants from persons of plaintiff s qualifications. *Heerdinkv. Amoco Oil Co.*, 919 F.2d 1256, 1259 (7th Cir. 1990) quoting *Texas Dept. of Community Affairs v. Burdine*, 450 U.S. 248, 253 (1981).

Plaintiff has established that she is a member of a protected class and that she applied for at least five positions within the Chicago School District. However, she has failed to establish that she was qualified for the positions for which she applied. Plaintiff had a history of problems while a substitute teacher with both students and administration in several schools and also had problems at the Substitute Center. In addition, some of the positions she applied for included computer science, in which the plaintiff is not certified to teach. Furthermore she admitted in her deposition that she understood why she was not hired to teach computer science and that she did not believe that any school principals discriminated against her.

Plaintiff argues that she was certified to teach Math and had a bilingual certification. Therefore, she was qualified, and the Board should have done more to secure her a position. However, certification and endorsements are only

threshold requirements, and the school principal determines what candidates to interview and eventually send to the Board for approval. The term qualified encompasses other qualities, such as demonstrated expertise in a relevant subject matter, background and work experience in the subject area of the vacancy, certification or endorsement in multiple areas, efficient allocation of educational resources, demonstrated maturity, the applicant's teaching philosophy, and previous work experience that demonstrates a variety of skills that can benefit students. As set out above, plaintiff did receive a positive recommendation from an assistant principal from Senn Academy; however, she has not established that she applied for a position at that school in 1997 or 1998.

Plaintiff also failed to establish that, after her rejection, the position remained open and the employer continued to seek applicants from persons of plaintiff s qualifications.

Even if plaintiff was able to establish a prima facie case, she has failed to establish that the Board's reasons for not hiring plaintiff were a pretext to national origin or sex discrimination. A plaintiff can establish pretext by showing that the employer's explanation is unworthy of credence or that a discriminatory reason more likely motivated the employer. *Debs v. Northeastern Illinois Univ.*, 153 F.3d 390, 395 (7th Cir. 1998) *(Debs)*. Pretext in this context does not mean a mistake;
rather, it means "a lie, specifically a phony reason for some action." *Russel v. Acme-Evans Co., 51* F.3d 64,68(7th Cir. 1995). An honest belief in the nondiscriminatory reason offered by the decision maker will be sufficient even if the reasons are foolish, trivial, or even baseless. *Debs*, 153 F.3d at 396.

Plaintiff was not interviewed at all schools that had openings because some principals conducted interviews based only on the resumes they directly received from applicants, and plaintiff did not send a resume to every school. Plaintiff

has failed to establish that the refusal to hire plaintiff because other candidates were better qualified was a pretext to discrimination. Plaintiff admits that no principals discriminated against her, and it was the principal's choice as to who to interview and who to recommend to the Board to be hired. In addition, plaintiff failed to present any evidence that the individuals hired for the positions that she applied for were as qualified or less qualified than plaintiff.

B. Age Discrimination

To succeed on a claim under the ADEA, plaintiff must show that her age was a determining factor in the employer's decision not to hire her. See *Adreani*, 154 F.3d at 393. Plaintiff must establish by the preponderance of the evidence (*Jackson*, 176 F.3d at 982) that: (1) she was in a protected class (40 years of age or older (29 U.S.C. § 631(a)); (2) she performed her job duties such that she was meeting her employer's legitimate expectations or was qualified for the job for which she applied; (3) despite her performance, she was discharged or not hired; and (4) similarly situated younger employees were treated more favorably (*Taylor v. Canteen Corp.*, 69 F.3d 773, 779 (7th Cir. 1995)). Plaintiff has established that she is a member of a protected class and that she was not hired for the positions she applied. However, as stated above, she has failed to establish that she was qualified for the positions for which applied. In addition, she has presented no evidence that similarly situated younger applicants were treated more favorably. Furthermore, as found above, plaintiff has failed to establish that the reasons plaintiff was not hired were a pretext to age discrimination.

C. Wage Discrimination

To establish a prima facie case for wage discrimination, plaintiff must prove that she was paid less than a similarly situated employee who was not a member of plaintiff s protected class. *See Johnson v. University of Wisconsin*, 70 F.3d 469,478 (7th Cir. 1995). Plaintiff argues her claim with

the National Labor Board evinces discrimination against her. Plaintiff does not dispute that she was overpaid during 1997 and that the Board was justified in a return of the moneys she was overpaid. However, she disagrees with the amount of the adjustment. Plaintiff has failed to establish that the amount of the overpayment returned to the Board was incorrect or that the amount she was being paid was less than a similarly situated employee who was not a member of a protected class. Accordingly, her claim fails.

Defendant's Motion for Summary is granted on all claims, and plaintiff's Motion for Summary Judgment is denied.

Dated:_____ _____

JOHN W. DARRAH
U.S. District Judge

APPENDIX C

The Seventh Circuit Court of Appeals order on the Petitioner's Petition for Rehearing En Banc.

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604
October 12, 2001

Before

Hon. JOEL M. FLAUM, *Chief Judge*

Hon. FRANK H. EASTERBROOK, *Circuit Judge*

Hon. MICHAEL S. KANNE, *Circuit Judge*

No. 01-1621

ANNA V. EPELBAUM,
Plaintiff-Appellant,

v.

CHICAGO BOARD OF EDUCATION,
Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 98 C 3423

John W. Darrah, *Judge*

ORDER

On consideration of the petition for rehearing and petition for rehearing *en banc*, no judge in active service has requested a vote on the petition for rehearing *en banc* and all of the judges on the original panel have voted to deny rehearing. It is, therefore, ORDERED that rehearing and rehearing *en banc* are DENIED.

APPENDIX D

The Order of the Wage Section of the Illinois Department of Labor.

ILLINOIS DEPARTMENT OF LABOR
Fair Labor Standards Division
180 North LaSalle Street, Suite C-1300
Chicago, Illinois 60601
312-793 -2808

ANNA EPELBAUM 5848 N. KENMORE AVE.,#401 CHICAGO, IL 60660	)	DATE: Feb. 10,1998
Claimant,	)	File: 97-005143
CURIE HIGH SCHOOL 4949 S. ARCHER AVENUE CHICAGO, IL 60631	)	Amount: $266.46
Employer,	)	

WAGE PAYMENT DEMAND FINAL NOTICE

PLEASE BE ADVISED that after an investigation into the above-referenced wage claim,. this office notified you of wages due in the amount stated to the employee named above. These wages were found to be due to the employee under the provisions of the Illinois Wage Payment and Collection Act, 820 ILCS 115/1 et seq.

This office has not received your payment. As an employer in Illinois you are in violation of the Act. This Act authorizes this office to seek prosecution of the employer or its principals and the court to impose an additional penalty of up to 100% of the original amount of wages due.

THE DEPARTMENT HEREBY DEMANDS that you issue a certified check, cashier's check or money order, made payable for the amount indicated above as follows: LIST THE EMPLOYEE'S NAME, FOLLOWED BY "OR, "FOLLOWED BY THE ILLINOIS DEPARTMENT OF LABOR." DO NOT USE THE WORD "AND". BETWEEN THE PAYEES; USE THE WORD "OR." i.e., "Jane Doe (employee's name) OR the Illinois Department of Labor." The check must be delivered to the WAGE CLAIMS PROCESSING SECTION at the above address WITHIN 15 DAYS of receipt of this notice. Print or type the wage claim number on the face of the check.

Your prompt compliance with the Illinois Wage Payment and Collection Act will avoid further action by this Department.

R. Koller
FAIR LABOR STANDARDS DIVISION
Wage Claim Section

APPENDIX E

Three motions of the Petitioner, which were filed between 8/3/01 and 8/22/01 in the Seventh Circuit Court of Appeals.

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 01 -1621

ANNA V. EPELBAUM,
Plaintiff-Appellant,
v.
BOARD OF EDUCATION
OF THE CITY OF CHICAGO,
Defendant-Appellee.

MOTION TO REQUEST THE MOST SPEEDY ISSUANCE OF THIS APPEAL'S DECISION AND ALSO TO REQUEST THE ORDER TO PERFORM THE CALCULATION OF INTEREST OF THE ANTICIPATED BY THE PLAINTIFF-APPELLANT JUDGMENT SINCE JANUARY OF THE YEAR 2000.

1. As the Plaintiff has shown in her Appellant Brief and Reply Brief, pursuant to the fact, that the decision of Judge Darrah was deeply erroneous in the matter of law, because he granted in full the Defendant's Motion for Summary Judgment, which was completely stricken by the Plaintiff in the precise accordance to the requirements of all global and local rules in these areas of litigation, and, simultaneously, denied in full the Plaintiff's Motion for Summary Judgment, although the Defendant failed whatsoever, according to the requirements of the same rules, to oppose this motion, and, therefore, **this Plaintiff's motion was supposed to be granted in full not denied in full**, and, also, due to the fact that judge Darrah erred in this case simply because the content of this case, as the case of disparate treatment in employment, is crystal clear legally, the Plaintiff is

anticipating his judgment to be reversed, and her Motion for Summary Judgment to be granted in full.

At that point the problem of the interest's calculation on this judgment is becoming essential.

2. Rule 37(b) of Appellate Procedure states quote-by quote, " If the court modifies or reverses a judgment with a direction that a money judgment be entered in the district court, the mandate must contain instructions about the allowance of interest". Usually, this interest in the case of reversed judgments is allowed since the day when the erroneous judgment was issued. See, for example, *Total Petroleum, Inc. v. Davis, C.A.8 (MO.) 1987, 822 F.2d 734.*

However, it is stated quote-by-quote in the case *Bancamerica Commercial Corp. v. Mosher Steel of Kansas, Inc., C.A. 10 (Kan.) 1996, 103 F. 3d 80,* "Following reversal for district court's failure to grant prejudgment interest, postjudgment interest would accrue upon entire award granted by district court, including award of prejudgment interest".

3. **In this current case both motions, which Judge Darrah was considering in his judgment, were fully briefed by 11/24/99.** The time between this date and 2/12/2001, the date when judge Darrah issued his judgment, was used by the district court for two reassignments of judges on the case, and unsuccessful attempts of each new judge to find legal ground for the dismissal of the Plaintiff's Motion for Summary Judgment, and, subsequent dismissal of the entire lawsuit. These attempts were unsuccessful because of a simple reason - **the complete absence of such ground in the existing code of laws, due to the bright legal clarity of this case.**

4. Pursuant to the fact that this court is operating under the slogan, " Justice delayed is justice denied" (see Presumptive Times For Actions from Seventh Circuit Operation Procedure), the still pending shape of this legally crystal clear case doesn't at all serve to its advantage. Besides, it presents an example of the enormous and senseless waste of taxpayers' money.

5. Summarizing all of the above, the Plaintiff most respectfully, but very persistently moves this court to settle her appeal, which has been fully briefed since 5/9/01, as soon as possible, and to grant this motion in full in order to express the opinion of the higher court about the lower court's delays in the development of this lawsuit.

Besides, it would probably discourage the Defendant to exercise some future attempts to delay the final settlement of this lawsuit, these possible attempts, due to the crystal clear legal content of the case, could have no other but frivolous nature, and would, subsequently, only cause some additional financial penalties, which might be imposed on the Defendant.

Dated:____ With the respect to the court,

Anna V. Epelbaum, Plaintiff-Appellant, Pro Se

7531-1 N. Rogers Ave.,
Chicago, Illinois 60626
Phone: (773) 508-6170
Pager: (312) 904-2778

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
No. 01 -1621

ANNA V. EPELBAUM,
Plaintiff-Appellant,
v.
BOARD OF EDUCATION
OF THE CITY OF CHICAGO,
Defendant-Appellee.

MOTION TO EXPEDITE THE SETTLEMENT OF THIS CASE. THE SECOND REQUEST.

1. As it has been **many** times mentioned and proven, the legal content of this case is very clear.

2. This case is the case of disparate treatment in employment, but, pursuant to tile fact that the employer has been CPS-the largest public school district in Illinois, this case has a lot of illustrations of current failures of public school system. It is beyond any doubt that timely settlement of this case in January of 2000 would have been the possible tool to improve many failures of public secondary education system, which are still preserved.

3. The expecting reform of public secondary education is currently pending between the Congress and White House, and it has been many times advertised over media by White House about the importance to get the best shape of this future reform prior to incoming school year. **The best shape of this reform in all its details is the very important issue for any citizen of USA, including, without doubts, members of this court.**

4. Paragraph 9, Presumptive Times for Action, of United States Court of Appeals for the Seventh Circuit Operating Procedure (see page 88) states quote-by-quote, "A judge assigned to write a published opinion should circulate the draft to the other members of the panel within 90 days of the date the case was argued or submitted." Further the same paragraph states quote-by-quote, "Every judge should respond - by approval, memorandum, suggesting changes, or notice that a separate opinion is under active consideration - within 10 days of the circulation of the draft".

5. Due to the fact that this appeal has been fully briefed, e.i. fully submitted, since 5/9/01 and to the obvious fact that oral argument of this case has been skipped, now it is just the time, according to the Seventh Circuit Court Operating Procedure, to settle this appeal, unless there are Separate Opinions (see page 88, (d) of the same Paragraph 9), which is strange to expect, pursuant to the content of previous paragraphs of this current motion.

6. Summarizing all of the above, the plaintiff most persistently moves this court to comply with its own Operating Procedure, and to settle finally this appeal, with the respect to the content of the plaintiff's previous motion, on the behalf of Judicial System and mentioned above urgent political necessities.

Dated:_____ With the respect to the court,

Anna V. Epelbaum, Plaintiff-Appellant, Pro Se
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Chicago, Illinois 60626
Phone: (773) 508-6170
Pager:(312) 901-2778

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 01 -1621

ANNA V. EPELBAUM,
Plaintiff-Appellant,
v.
BOARD OF EDUCATION
OF THE CITY OF CHICAGO,
Defendant-Appellee.

MOTION FOR CLARIFICATION. THE THIRD REQUEST TO EXPEDITE THE SETTLEMENT OF THIS CASE.

1. The issued by this court on 8/17/01 order states quote-by-quote, "This matter has been fully briefed and **determined to proceed without oral argument.** This case will be **submitted** and decided as soon as this court's docket permits". This statement includes an obvious topical controversy, because the determination to proceed without oral argument can be made only by the court, and the submission of the case should, obviously, precede the issuance of such determination, **which implies, consequently, that the day of submission should be determined as a day before or at least as same day when the determination to proceed without oral argument was issued**. This equality of two events of the possible oral argument and the day of the submission is illustrated, for example, by paragraph 9, page 88 of United States Court of Appeals For The Seventh Federal Circuit Court Operating Procedure, which states quote-by-quote, "A judge assigned

to write a published opinion should circulate the draft to the other members of the panel within 90 days of the date **the case was argued or submitted".**

2. **On** the other hand, the Plaintiff, the same way as all other appellants and appellees, is not authorized to become familiar with the **internal** dockets of this court **and** can be lead **only** by **the mentioned handbook, which this** court published to keep litigants **informed** about the presumptive times of its operating procedures and these times' limits. This handbook states quote-by-quote on the page 88 of the same paragraph 9, "Expeditious preparation and release of opinions and orders is important not only to litigants,. ..but also to the operation of the court.....". **The** history of this case's development in the district court, which includes all kinds of delays, and, finally ended up, therefore, with completely erroneous in the matter of law decision of judge Darrah, justifies the quoted above text.

3. In her previous motion the Plaintiff has already emphasized that, pursuant to the crystal legal clarity of this current case, and, according to the paragraph 9 of United States Court of Appeals For The Seventh Federal Circuit Court Operating Procedure, the settlement of this current case is supposed to be due not later than 100 days after the initial submission, which, pursuant to the content of the paragraph 1 of this current motion of the Plaintiff-Appellant, is not later then the mentioned above day of the determination for this case to proceed without oral !argument - 6/8/01, according to the docket of this appeal.

4. In her previous motion the. Plaintiff also emphasized the urgent political importance of the release of this case's

material to public observation, pursuant to its vivid **and** essential connections with the pending right now between the Congress and the White House future reforms of public secondary education.

5. The Plaintiff think that **the logical mistake of this court's last order doesn't indicate this court's conscious intentions to continue the pending shape of this current lawsuit in violation of this court's own operating procedure, as well as, the very basis of the judicial operating procedures at all ("Justice delayed is justice denied"),** as **the** district court had **been trying** to do within the long while of time, especially, between 1/2000 and 2/2001.

6. Summarizing all of the above, the Plaintiff most persistently moves this court to answer this motion promptly by the issuance of the lawful settlement of this current appeal **prior to the due date of 9/18/01** in order to comply with mentioned in the paragraph 4 of this current motion political necessities, which should be certainly very important for judges of this court, **assuming that they are patriotic or even simply royal citizens of the USA.**

Dated:_____ Submitted By,

_____

Anna V. Epelbaum, Plaintiff-Appellant, Pro Se

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Chicago, Illinois 60626
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APPENDIX F

The docket of the proceedings in the Seventh Circuit Court of Appeals.

01-1621 Epelbaum, Anna v. Chicago Bd Educ, et al

CHICAGO BOARD OF EDUCATION
Marilyn F. Johnson
Defendant - Appellee 773/553-1700
[COR LD NTC ret]
CHICAGO SCHOOL REFORM
BOARD OF TRUSTEES
125 S. Clark Street
Suite 700
Chicago, IL 60603

Docket

3/13/01	Private civil case docketed. [01-1621] [1380540-1] Transcript information sheet due 3/23/01. Appellant's brief due 4/23/01 for Anna V. Epelbaum. (squi)
3/13/01	Filed Appellant Anna V. Epelbaum docketing statement. (01-16211 [1380548-1] (squi)
3/13/01	[01-1621] ROA from No. Dist. of Il., E. Div. due 3/26/01. (squi)
3/21/01	Filed Seventh Circuit Transcript Information Sheet by Anna V. Epelbaum for Appellant Anna V. Epelbaum. [01-1621] [1380540-1] (amyd)

3/23/01	original record on appeal filed. Contents of record: 3 vol. pleadings; 1 vol. loose pleadings; 1 vol. exhibits. [01-1621] [1383558-1] (bria)
4/2/01	Filed 10c appellant's brief by Anna V. Epelbaum. Disk not required. [01-16211] [0-0] Appellee's brief due 5/2/01 for Chicago School Refor. (jenn)
5/2/01	Brief deficiency letter sent to Appellee Chicago School Refor. [1380540-1] [01-1621] (scze)
5/2/01	Filed 15c appellee's brief by Chicago School Refor. Disk filed. [01-1621] [0-0] Appellant's reply brief due 5/16/01 for Anna V. Epelbaum. (scze)
5/9/01	Filed 10c appellant's reply brief by Anna V. Epelbaum. Disk not required. [01-1621] [0-0] (hard)
5/24/01	Filed oversized record in Section # 16 of exhibit room: 1 box containing briefs. [1380540-1] [01-1621] (cove)
6/8/01	This cause has been determined to proceed without oral argument, pursuant to Circuit Rule 34(f). [01-1621] [1380540-1] (broo)

8/3/01	Filed prose motion by Appellant Anna V. Epelbaum to request the most speedy issuance of this appealls decision and also to request the order to perform the calculations of interest on the anticipated by the by the appellant judgment since January of the year 2000. [1422407-1] [01-1621] (hard)
8/16/01	Filed prose motion by Appellant Anna V. Epelbaum to expedite settlement of this case. [1426588-11 [01-1621] (alic)

8/17/01	ORDER re: 1) Motion to request the speedy issuance of this appealls decision and also to request the order to perform the calculations of interest on the anticipated by the appellant judgment since January of the year 2000. 2) Motion to expedite the settlement of this case. The second request. This matter has been fully briefed and

	has been fully briefed and determined to proceed without oral argument. Thus, case will be submitted and decided as soon as this court's docket permits. AJM [01-1621] (hard)
8/22/01	Filed prose motion by Appellant Anna V. Epelbaum for clarification of the third request to expedite the settlement of this case. [1427752-1] [01-1621] (hard)
9/10/01	Pursuant to FRAP 43(c), party Chicago School Refor has been removed from this case and replaced by Chicago Bd Educ, per final opinion/Circuit Rule 53 order. [01-16211 [1380540-1] (elea)
9/10/01	Filed Circuit Rule 53 order PER CURIAM. The judgment of the district court is AFFIRMED. Epelbaum's "Motion for the Clarification the Third Request to Expedite the Settlement of This Case" is DENIED. Chief Judge Joel M. Flaum, Circuit Judge Frank H. Easterbrook, Circuit Judge Michael S. Kanne. [01-16211 [1380540-1] (land)
9/10/01	ORDER: Final judgment filed per C.R. 53 order. With costs: n. [01-1621] [1432493-1] (land)

9/14/01	Filed oversized record in Section # 16 of exhibit room: 1 box containing 3 vol. pleadings; 1 vol. loose pleadings; I vol. exhibits. [1380540-1] [01-1621] (cove)
9/17/01	Filed 30c Petition for Rehearing and Petition for Rehearing Enbanc by Appellant Anna V. Epelbaum. Dist. [01-1621] [1434450-1] (hard)
10/12/01	ORDER: Appellant Anna V. Epelbaum Petition for Rehearing and Petition for Rehearing Enbanc is DENIED. [01-1621] [1434450-1] (kell)
10/16/01	Filed prose motion by Appellant Anna V. Epelbaum to stay the mandate. [1443564-1] [01-1621] (hard)
10/19/01	ORDER issued DENYING motion to stay the mandate. It is unnecessary to stay this court's mandate for appellant to file a petition for certiorari before the Supreme Court. [1443564-1] EGG [01-1621] (kell)
10/22/01	MANDATE ISSUED AND ENTIRE RECORD RETURNED. (Contents returned: 3 vol.

	pleadings; 1 vol. loose pleadings; 1 vol. exhibits;) [01-16211 [1380540-11 (cove)
10/26/01	Filed mandate receipt. [01-1621] [1446843-1] (cove)

APPENDIX G

The text of the Petitioner's Petition for Rehearing En Banc.

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STANDARD OF REVIEW

1. Is it possible to approve by affirming the order of the court from 9/10/01 that the only duty, which this society requires its members to pursue is **the duty to remain silent,** and the only civil right, which this society guarantees to its members in exchange is also **the right to remain silent?**
2. Is it possible by affirming this order to affirm the fact that the motion, which entire essential to its outcome content is proven beyond any doubt to be the perjury, can be, in spite of these undoubtful proofs, granted in full?
3. Is it possible, simultaneously, to deny another motion, which, according to all developed by Supreme Court patterns, local rules of this court, and other developments in these areas of litigation, should be granted in full? Is it possible to start such way the intensive destruction of all these, developed by American Justice System, patterns in pertinent to this case areas of litigation?
4. Where is this society going, if by affirming this order, all three questions from above would be answered by YES, which is what the affirmation of this current order in question means?

THE PRESENTED ON THE RECORDS OF THIS LAWSUIT MATERIAL AND DEVELOPED IN THIS AREA OF LITIGATION SUPREME COURT'S PATTERNS CONTROVERT BASIC STATEMENTS OF THE COURT'S ORDER AND ITS CONCLUSION.

1. Page 2 of this order states quote-by-quote, "In order to present a *prima facie* case of discrimination, however, she also needed to set forth evidence showing that she was qualified for the positions she sought and that positions were filled with individuals not in the protected class." In the case of the Plaintiff all positions, which she was seeking, were remaining officially open because they were filled with people without issued by ISBE certificates and pertinent endorsements, and can't, subsequently, be reported as filled out, pursuant to Illinois School Code of Laws. The Plaintiff utilized, therefore, for her proof the developed in the case of *McDonnell Douglas Corp. v. Green* pattern of disparate treatment (see page 22,23 of Appellant Brief of the Plaintiff, also page 14 of the Plaintiff's Reply Brief). While in District Court, the Plaintiff utilized this approach in her Motion To Dismiss The Pending Motion Of The Defendant With Prejudice from 10/12/1999. **The successful approach to fit this, developed for such kind of cases, pattern of the Supreme Court excludes the necessity to follow the quoted above and inapplicable to the Plaintiff's case approach.** Therefore, references to *Gorence v. Eagle Food Ctrs., Inc., 242 F.3d 759, 764-65 (7th Cir.2001); Pattford v. Herman, 148 F.3d 658, 659(7th Cir.1998)* are without merit in application to the discussed hereby issue.
2. According to ILCS 5/24-1(school board have authority to determine qualification of employment), Chicago School Board had authority to determine qualification of employment in the case of a choice between two or more qualified, in compliance with Illinois School Code of Laws,

specialists. **However, 105 ILSC does not allow and, on the contrary, does forbid the delegation of power to issue certifications and endorsements to teach in Illinois from ISBE to CBE.** Therefore, under the circumstances of widely then advertised by the CBE in interviews with its CEO, Mr. Paul Vallas, shortage of qualified, according to 105 ISBE, specialists in areas of the Plaintiff's endorsements(see, for example, Exhibit #1 to the Plaintiff's Deposition from the Defendant's Motion for Summary Judgment of 8/20/1999), the application of 105 ILSC 5/24-1 and subsequent reference to *Zink v. Bd. of Ed., 497 N.E.2d 835, 839 (ILL.App.1986)* are both without merit. See also page 6, paragraph 10, of the Reply Brief of the Plaintiff.

3. It is stated on the page 2 of the same order[1] that the Plaintiff failed to present information of "whether she is certified by the Illinois Board to teach more than one subject...."

The ISBE, certainly, doesn't require an additional endorsement in different subject area in order to be qualified in an area, where an applicant already possess an endorsement. Minimum Requirement For State Certificates, page 38, however, states quote-by-quote, "No one may teach or supervise in the public schools nor receive for teaching or supervising any part of any public school fund, who doesn't hold a certificate of qualification granted by the State Teacher Certification Board". The Plaintiff can only guess that this statement of the court's order originates in Zavitkovsky Affidavit, Butterfield Affidavit or other material of the Defendant's motion for Summary Judgment. If it is unfortunately so, then the Plaintiff needs to emphasize that in her Motion To Dismiss ...from 10/12/99 and in her Cross-Reference Motion for Summary Judgment from 11/24/99,

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[1] In the format of Appendix A to this current petition it is page 3. All citation inside of this Appendix G are changed to fit this current format in comparison with the original text of the content of this Appendix.

Part I, the Plaintiff provided the precise proof, that the entire, essential to the outcome of this motion (Defendant's Motion For Summary Judgment), part of it, is, beyond any doubt, the obvious perjury. This proof was, once more, repeated (in its essential part) in the Appellant Brief of the Plaintiff (see Part I, Part III, but, especially, Part II of this brief). The Defendant never rebutted this proof, or even part of it. In her further material either in District Court or in the Court of Appeal, she, simply, claimed all her stricken facts from her LR.56(1) Statements of Facts as "being uncontested" She also ignored presence of the facts in the Plaintiff's LR 56(1) Statements of Facts of the Plaintiff's Cross-Reference Motion for Summary Judgment, Part II, in direct violation of this rule 56.(1), itself, providing by that action the unavoidable conclusion that this Plaintiff's Motion for Summary Judgment should have become a subject to be granted in full. See Seventh Example of Part II of the Plaintiff's Appellant Brief (page 19-21), Part III of it, and its Summary of Argument.

4. The current order states quote-by-quote on its page 2[2], "To determine if an individual is qualified for a particular teaching position, the Board also considers the following factors, among others: her demonstrated experience and background in the relevant subject area whether she is certified by the Illinois Board of Education to teach more than one subject, and her teaching philosophy and previous work experience. In response to the Board's motion for summary judgment, Epelbaum failed to present evidence that she provided information regarding these factors to the board; in fact she failed to even identify the job requirements for the positions she sought and present evidence that she met those requirements." Though the Plaintiff has already answered in the previous paragraph to the requirement to

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[2] Page 3 in the current format of Appendix A to this petition.

have "more than one endorsement by the Illinois Board", she would answer to rest of this statement as following:

a. Fact 63, page 14 of the Defendant's Statement of Facts from her Motion for Summary Judgment states quote-by-quote, "Plaintiff was included in employmentdatabases for at least 1997";

b. Fact 66, page 14 of the same document as above states, " To be included in Employment Databases, applicants are required to register with the Department of Human Resources by completing a database interest card";

c. These cards are standard and they always include such things as demonstrated experience, background, pertinent credentials, teaching philosophy, endorsements, etc.;

d. The Defendant admitted by these facts that she knew that the Plaintiff submitted all her data, which are quoted in this paragraph above, to the Human Resources of the Board, therefore, the Plaintiff, pursuant to Rules of Evidence of the Federal Civil Procedure, didn't need at all to submit any of such evidence. Besides, as an employee of the Board, though even part-time, the Plaintiff had there her file with all these data in discussion, and was obligated to renew them, if there was any new pertinent information;

e. Job requirement for the positions, the Plaintiff sought, in the conditions of the many times already discussed, confirmed by evidence and advertisements, official sharpest shortage of qualified, according to ISBE requirements, specialists, is very simple - to fit these requirements, which are Illinois endorsement or, local **legal** endorsement., the proofs of possession of which the Plaintiff submitted many times, however, she didn't even need to do so, pursuant to the same

reason, as mentioned above,- the admission by the opponent.

5. In response to any motion, the opposing party is never obligated to submit already admitted by the moving party facts, and, therefore, to claim the dismissal on this ground is at least improper, according to rules of Federal Civil Procedure.

6. The order also states on the same page 2[3], "She (the Plaintiff) also failed to rebut facts presented by the board showing that she was not qualified; namely, that approximately twenty schools had requested that Epelbaum not be assigned to them, and that she was excorted out of one school by security guard." The Plaintiff responds to it as following:

a. The facts pertinent to the mentioned issues were presented in the LR 56(1) Statements of Facts of the Defendant's Motion for Summary Judgment;
b. The Plaintiff controverted them, as all other pertinent to the outcome of this motion facts of the Defendant's Statement of Facts;
c. The Defendant was able, as with all other pertinent to outcome of this motion facts, to support them only by the word "uncontested";
d. According to LR 56(1)(B), it meant that the Defendant failed to protect them, and they are stricken, therefore, the quoted above in this paragraph statement is without merit.

7. This order states further," Epelbaum provided nothing more than her unsubstantiated opinion that she was qualified for the position.." The Plaintiff responds as following:

a. Pertinent to the sought by the Plaintiff positions credentials of the Plaintiff are either admitted by the Defendant and, at that point, were not mentioned in the Plaintiff's responses to the Defendant's motion

[3] It is also page 3 in current format of Appendix A.

for Summary Judgment, or, questioned by the Defendant, and, therefore, enlightened in her Statements of Facts. If these facts are essential for the outcome of this motion, then, they were controverted by the Plaintiff, and the Defendant was able protect them only by the word "uncontested", which, as it is already explained above, means that they are stricken;

b. In any occasion, the statement that the Plaintiff's degrees, diplomas, certificates, etc., pertinent to her approved by Illinois Board of Education eligibility to teach, is nothing more than the Plaintiff's "unsubstantiated opinion" means **nothing less** than obvious violation of the Rule 703 of Fed. Civ. P. of Evidence, Bases of Opinion, Testimony by Experts, because people, who issued the Plaintiff her International Degrees, Diplomas, Illinois Certificates, accepted by ISBE teaching experience, etc., in short, all pertinent to her global and local endorsements credentials, are, without any doubts, recognized experts.

8. Statement of the order " In the absence of evidence that she was qualified to be a cadre substitute or full-time teacher, Epelbaum failed to establish a *prima facie* case of discrimination" has, obviously, no sense and merit in the described above in this petition circumstances of the official sharpest shortage of qualified teachers and even substitutes, when the necessary requirement automatically becomes a sufficient one. Therefore, the reference to the *Cleveland v. Porca Co., 38 F. 3d 289, 295 (7th Cir. 1994)* is hereby without any merit.

9. The court's order states on page 3[4], "(Epelbaum) alleged in her complaint that the Board discriminated against her as early as 1991 (even though she didn't start teaching in the

[4] It is page 3 in current format as well.

Chicago public schools until 1994)" The Plaintiff s answers to it is following:

a. The Defendant recognized the fact that the Plaintiff registered her Bilingual certificate with the CPS in August of 1991(see her LR.56(1) Statements of Facts);

b. The Exhibit 4 to Part I of the Plaintiff's Cross-Reference Motion for Summary Judgment presents one page of Board's Rules from 1990, where Sec. 4.15, Eligibility List of Teachers, stated that schools principals should be informed by the Board about eligible to occupy their openings teachers who submitted their data to the CBE (Chicago Board of Education or Chicago Public Schools);

b. As it is stated in the Plaintiff's Amended Complained, Mr. Miranda, then the recruiter, refused to do it for her, although was obligated by the described above rule;

c. Exhibit 1 to the same Part I of the same motion of the Plaintiff presents the copy of document, which required back then (the same way as now) Chicago residency for all people who were eligible for employment with the CPS, which means that non residents were not members of Protected Class;

d. Exhibit 6 to the Plaintiff's Motion to Dismiss... from 10/12/99 presents the request, which then acting principal of Boone school submitted to Oak Brook Educational Employment Agency, looking for suburban residents, not members of protected class, to fill out the suitable for the Plaintiff's qualification position, and this position was, eventually, filled out with one of these non members of Protected Class;

e. References to *Gorence v. Eagle Food Ctrs., Inc., 242 F. 3d 759, 764-65 (7th Cir. 2001); Pafford v. Herman, 148 F. 3d 658, 669 (7th Cir. 1998)* are,

obviously, valuable hereby in difference with where in this order they were originally referred to.

10. The page 3[5] of the order states quote-by quote, "Epelbaum never raised equitable tolling in the district court, however, and has waived this argument". The Plaintiff answers as following:

a. Page 19 of the Plaintiff's Motion to Dismiss...from 10/12/99 stated quote-by-quote, " The same paragraph 8.24 also states that the limitation period of the discrimination can be a subject of tolling, "Tolling may be allowed where the charging party has been mislead or because of the circumstances beyond the charging party control"";

b. It is obvious, pursuant to the above, that the reference to *Schoenfeld v. Apfel, 237 F. 3.d 788, 793 (7th Cir. 2001)* should become void hereby.

11. Summarizing all of the above, each attentive reader should admit that the Plaintiff has delivered the promise of the title of this part of current petition and also shown, during this delivery, how difficult it would be in the future to use the developed by this court local rules, if this court affirms the content of the order in discussion, **assuming, of course, that this entire case would not be hidden completely from public eyes, as it has been happening with this case by now.**

THE HISTORY OF THIS CASE'S DEVELOPMENT AND SOME IMPLICATIONS

1. Plaintiff initiated this fight with the CPS in August of 1997 after she was dismissed from position of the math teacher in summer school of Curie High School and, simultaneously, offered by the same principal, who was dismissing her then, to start to work in his school as a teacher of English as

[5] It is page 4 in current format of Appendix A.

second language (see page 14 of the Plaintiff's Motion To Declare..... from 12/3/98) in violation of official requirements to credentials, Plaintiffs knowledge and abilities, basic establishments of professional approaches in education, basic common sense, etc.

2. The Plaintiff, as a newcomer (she arrived to USA in 1990, and became American citizen in 1996), didn't realize back then what exactly she pulled herself in. When she finally realized it, it was too offensive and too late to retreat. Therefore, in spite of all odds, she continued to run this case and has, subsequently, the legal right to file this current petition.

3. Logically, this case was supposed to be finished by default (see first three pages of its docket), but it didn't happen, and then judge Norgle, who was initially assigned on the case and also let the Plaintiff run this case pro se, chose to fire himself from it, and newly then appointed in District Court judge Pallmeyer was assigned on this case (see the case's docket).

4. The Plaintiff first contacted this Court of Appeal on 11/6/98, when judge Pallmeyer let her opponent to prepare motion to dismiss the case, but, simultaneously, refused to compel from the Defendant some material, subpoenaed by Plaintiff prior to this judge's assignment. The Plaintiff was afraid that this situation would constitute the formal reason for Pallmeyer to dismiss the case, because the initial design of her Amended Complaint included this subpoenaed material, and, therefore, filed her complaint about misconduct.
Judge R. Posner, then the Chief Judge of this Court of Appeals, answered the Plaintiff that the approach to be economical with tax payers' money is the main leading approach of this court, and, therefore, her complaint was denied.

5. Judge Pallmeyer, however, maybe, because she, herself, belongs to minority (woman), maybe, due to some other

more serious and deep reasons, chose not to dismiss this case, although she was allowed to do it.

6. In January of 1999, when, after many delays and contamination, the attorney of the Defendant committed an obvious "fraud on court", the Plaintiff filed with this Court of Appeals her Petition for Writs of Mandamus and Prohibition, asking to put this case on trial and implying that in described circumstances it would serve the leading approach of this court-to save taxpayers money. This Petition (#99-1184) was, however, denied. One of the members of that court is, simultaneously, the member of the court, which current decision is the issue of this petition.

7. In June of 1999 the Plaintiff filed with this court another Petition For Writs of Mandamus and Prohibition with, practically, the same request - to send this case to trial by a Jury. This petition (# 99-2490) was also denied. The tendency to hide this case from public eyes became completely clear. Two members of that court are, simultaneously, two other members of the court of this current order in discussion.

8. The current appeal was filed on 3/12/2001. The decision on this appeal was issued on 9/10/01. Because this court, obviously, isn't going to publish this decision, the time of Appeal's pending was extremely long in violation of this court's operating procedure, and, due to the fact that oral argument was also annulled, **this treatment only strongly confirms this court's tendency to hide this case from public eyes, no matter how deeply they are obligated to violate all procedural rules, laws, established patterns, the very basis of justice, etc. on this way.**

8. Let us then consider what this case is about:

   a. The case was started because the Plaintiff was and is now sure that duties of each member of this society to the society are to do their professional best in the area of each member's employment. However,

starting with the accident, which is mentioned above in the paragraph 1 of this part of current petition, and further, during the entire development of this lawsuit, she was persistently shown that only duty, which she, really, has is **the duty to remain silent**;

b. The Plaintiff, who never had any hint of any criminal background, is also shown by the development of this current lawsuit, which is described above, that the only civil right, which she, really, has is **the right to remain silent**.

9. When on 9/10/01 the Plaintiff received this current order in discussion, which was, among others, signed by the Chief Judge of this court, she decided that her communication with this court is over and started to prepare her Petition for Supreme Court and her motion to stay out of mandate. However, the tragedy of 9/11/01 made her to change her mind and to address, once more, this entire court en banc.

10. Here are the reasons for her current decision:

a. For those members of this panel, who want to approve this current order, approving, simultaneously, the treatment, applied to the Plaintiff, and thinking that they, themselves, sure, can't be in the same situation, this terrible accident should be a "wake up call" to show that, if the cooperation of internal and external fascism, which caused this terrible action, would win, then, although the Plaintiff has the personality, which most likely would guarantee her the place in the first echelon for an extermination, they, themselves, could easily obtain their places in the second, or even in the same one;

b. The life in the society, which would have rules like emphasized above, in the paragraph 8 of this part of the petition, could be perfectly illustrated by this translation of Russian poem,

"It would be nice on this future earth

For those who die or don't get birth".

11. The Plaintiff is applied and pure mathematician, who don't like absence of any professionalism in each area, which, actually, started, as it is shown above, this entire lawsuit. Therefore, she could understand that this panel of legal professionals could have some unpleasant feelings awarding the victory to the dilettante, as "this Plaintiff- pro se". **However, this case never was a battle on the turf of laws. The legal rightfulness of this lawsuit was crystal clear from the very beginning,** therefore, the problem was to model the situation of real life, utilizing available statistics, and to prove the correctness of this model. This is exactly what applied mathematicians are trained to do. **Therefore, this was the battle on the Plaintiff's turf, and her opponents were sentenced to loose from the very beginning, unless the Plaintiff would have been destroyed one or another way.**

CONCLUSION

Summarizing all of the above, the Plaintiff respectfully asks the members of this panel to controvert the court's order in question, to issue the only lawful decision for this current appeal, which is to grant in full her motion for summary judgment. She also asks the members of this panel to order to start the calculation of interest on this judgment since January of 2000 when, actually, this judgment was supposed to be issued (see Plaintiff's Motion To Request .., pages 2,3 from 8/3/01) in order to promote this court's official slogan, "Justice delayed is justice denied" (see page 88 of this court's handbook). **The Plaintiff also thinks that this case raised very important issues, and, therefore, hopes that it would be published**.

Submitted by:

Date:_____ _____

Anna V. Epelbaum, the Plaintiff, Pro Se

APPENDIX H

Some documents from the record of this lawsuit to illustrate its crystal legal clarity and the complete denial of the access to justice for the Plaintiff by the entire development and the final decision of this lawsuit.

THE UNIVERSITY OF CHICAGO
DEPARTMENT OF MATHEMATICS
5734 UNIVERSITY AVENUE
CHICAGO * ILLINOIS 60637
FAX: (312) 702-9787
BITNET: usmath%zaphod@uchicago.bitnet
INTERNET: ucmath@zaphod.uchicago.edu

May 3, 1994

To Whom It May Concern:

This is to certify that the Diploma # MB N 863847 for the Specialization " Mathematics" awarded to Anna Epelbaum by the Mathematics Faculty of Moscow State university named M.V. Lomonosov is the equivalent of the Master's Degree in mathematics awarded at a university in the United States.

I can attest to this from my research of the Russian mathematical system for the past 40 years.

Sincerely yours,

Izaak Wirszup
Professor Emeritus of Mathematics
Principal Investigator,
University of Chicago School Mathematics Project

THE UNIVERSITY OF CHICAGO
DEPARTMENT OF MATHEMATICS
5734 UNIVERSITY AVENUE
CHICAGO * ILLINOIS 60637
FAX: (312) 702-9787
BITNET: usmath%zaphod@uchicago.bitnet
INTERNET: ucmath@zaphod.uchicago.edu

IZAAK WIRSZUP

Biographical Note

Magister of Philosophy in Mathematics, University of Wilno
Ph.D. in Mathematics, The University of Chicago

Izaak Wirszup, Professor Emeritus of Mathematics, has served on the Faculty of the University of Chicago since 1949, when he was invited to the University from Paris. Professor Wirszup is continuing his research and work as Principal Investigator of the Amoco-sponsored University of Chicago School Mathematics Project and Director of the International Mathematics Education, which is funded by the National Science Foundation. The NSF Surveys Professor Wirszup has been directing for the past thirty years have published 57 books of adapted translations from the Russian; the books comprise topics in mathematics, mathematics education, and research in the psychology of learning and teaching mathematics.

Professor Wirszup has served as a consultant and lecturer for the Ford Foundation and the National science Foundation for mathematics programs in South America (Colombia and Peru), Africa and India. he is fluent in six languages. Professor Wirszup also serves as Advisor on Mathematics to the Encyclopedia Britannica.

Biographical Listings: Who is Who in America; Who is Who in the World; American Men and Women of Science.

THE UNIVERSITY OF CHICAGO
DEPARTMENT OF COMPUTER SCIENCE
RYERSON HALL
1100 EAST 58th STREET*CHICAGO*ILLINOIS 60637

Todd F. Dupont
Chairman

Phone: 312/702-6011
Fax: 312/702-7108
E-mail: chairman@cs.uchicafo.edu

July 6, 1995

To Whom It May Concern:

I have examined the certificate N318 for Anna Epelbaum which states that she passed the Ph.D. exam on a topic of

"Mathematical Methods and the Using of the Computer Science in the Economical Research and in the Management of the Economy."

In addition, she has represented to me that the papers she published before 1980 were written by 1975. Based on these facts I believe that she had the equivalent of an M. S. in Computer Science by 1975.

Sincerely,

Todd Dupont
Professor and Chairman

TD/mpj

A295596

STATE TEACHER CERTIFICATION BOARD-STATE OF ILLINOIS

CERTIFICATE

ISSUED TO
333-84-7947
EPELBAUM ANNA

CERTIFICATE
NUMBER: 1418855
TYPE : 09
ISSUED : 07-13-95
YEARS VALID : 4
VALID FOR : High School
6-12 Teaching

Issued by the State Teacher Certification Board at Springfield, Illinois

JOSEPH A. SPAGOLO

Regional Superintendent of Schools

Chairman of the Board Secretary STATE SUPERINTEND.

Region

ENDORSEMENTS: the certification holder is qualified to teach the subjects, to perform the school services or to serve in the field of administrative endorsement listed below.

MATHEMATICS (9-12) 07-13-95

UPPER ELEMENTARY / JR. HIGH MATHEMATICS (6-8) 07-13-95

ADDITIONAL INFORMATION: THIS CERTIFICATE IS VALID FOR 4 YEARS AND MAY BE RENEWED.
A HOLDER OF THIS CERTIFICATE MUST BECOME U.S. CITIZEN WITHIN SIX YEARS OF THE ISS. DATE.

Russian Soviet Socialist Republic
Ministry of Education
Department of Public Education,
City of Moscow
Secondary School No. 7
Oktyabrsky District
City of Moscow
March 17, 1995
Document Number 39
17 Krupskaya Street
Phone: 139-38-09

Certification.

Given to Anna V. Epelbaum, born 1948, to confirm that she was employed by Secondary School No. 7 in the Oktyabrsky District, City of Moscow, in the capacity of full-time teacher of mathematics and Computer Science for the final four grades, from 1975 through 1981.

This document is provided to show upon request.

Principal of Secondary School No. 7 [signature and seal]:

Z.I. Akimenko

Charles P. Steinmetz Academic Centre

Dr. Constantine Kiamos
Principal
Emlia Lacivita
Administrative Assistant

Dr. Arthur Tarvardian
Victor Vant
Assistant Principals
Budget & Finance

----------> FILE

October 14, 1993

Ms. Ursula Anderson
Director
Substitute Center
Mail Run #95

Dear Ms. Anderson:

Re: Anna Epelbaum, SSN 333-84-7947

Be advised that future assignment of the individual reference above to provide substitute services will be refused by Steinmetz Academic Centre. This person was discharged this day at 10:00 a.m. for refusal to follow directives and for rudeness. removal from our premises required police escort.

Sincerely,

Constantine P. Kiamos
Principal

000695

Illinois Alliance of Essential Schools

3030 North Mobile Avenue*Chicago, Illinois 60634
Phone: (312) 534 - 3030 Fax: (312) 534-3151

Senn Metropolitan Academy
5900 N. Glenwood Phone: (312) 534-2365
Chicago, Illinois 60660 Fax: (312) 534-2369

Christine Clayton
Principal

Assistant Principals
Palma Bonaminio
Judith Hernandez

Assistant Principals
Badel Khano
James Pastersk

December 14, 1993

Dear Sir:

Mrs. Anna Epelbaum has been working as a volunteer at Senn Metropolitan Academy since September, 1993. During that time, she has tutored Math, Computer science, and prepared students for various exams. I have found her to be an exceptionally qualified person who works extremely well with students.

It is my understanding that she is now making an application for a teaching position. I would recommend Mrs. Epelbaum to your program and I am sure you will find her to be a very committed teacher.

Sincerely,

Palma Bonaminio
Assistant Principal

**HAROLD
WASHINGTON
COLLEGE**

30 EAST LAKE STREET*CHICAGO*ILLINOIS 60601
Phone: (312) 553-5600

December 28, 1995

Re: Anna V. Epelbaum

To Whom It May Concern:

I am pleased to recommend Ms. Anna Epelbaum for any position which she believes would utilize her substantial talents and allow her the opportunity to advance in her profession. I have known Anna for approximately six months. she serves Harold Washington college as an instructor in the Department of Mathematics.

As the Director of development for Harold Washington College my department is responsible for all fund raising. For the past two months Ms. Epelbaum has devoted a portion of her time to writing a project proposal that, if funded, will strengthen the capabilities and utilization of advanced technology throughout the College.

Ms. Epelbaum, a gifted mathematician and teacher operates within a very disciplined work ethic which helps to account for the high standards that guide her performance. She is bright, adaptable, and has developed excellent inter-personal skills. Anna communicates effectively, both in speaking and in

writing. She is highly regarded by the science community in sections of Europe as well as in the United States.

Again, I highly recommend Ms. Epelbaum for any position she chooses to accept. Be assured her performance will be exemplary. if you have questions or require additional information please contact me.

Sincerely,

John Morrow, Ph. D.

ONE OF THE CITY COLLEGES OF CHICAGO